

AMENDED IN SENATE MAY 1, 2007

AMENDED IN SENATE MARCH 28, 2007

SENATE BILL

No. 815

Introduced by Senator Migden

February 23, 2007

An act to amend Sections 3, 4, and 7 of Chapter 543 of the Statutes of 2004, relating to tidelands and submerged lands.

LEGISLATIVE COUNSEL'S DIGEST

SB 815, as amended, Migden. Tidelands and submerged lands: City and County of San Francisco: central waterfront: Treasure Island.

(1) Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act, and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

This bill would authorize the City and County of San Francisco to lease, sell, or otherwise transfer all or any portion of certain tidelands and submerged lands constituting "paper streets" on the central waterfront in the City and County of San Francisco to any private person, partnership, or corporation, or to any governmental entity, free of the public trust and of any additional restrictions on use or transfer created by the Burton Act or Burton Act transfer agreement upon a finding and declaration of specified conditions by the State Lands Commission.

(2) The Treasure Island Public Trust Exchange Act approved an exchange of public trust lands within the Treasure Island Development Authority property, whereby certain trust lands on Treasure Island that meet specified criteria and are not useful for public trust purposes are freed from the public trust and may be conveyed into private ownership, and certain other lands on Yerba Buena Island that are not public trust lands and that are useful for public trust purposes are made subject to the public trust.

This bill would revise that act to, among other things, no longer allow the reconfigured trust lands to include additional land in the trust along the western shore of Treasure Island in exchange for additional land removed from the trust in a location within Treasure Island to be determined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. As used in this act:
- 2 (a) “Burton Act” means Chapter 1333 of the Statutes of 1968,
- 3 as amended.
- 4 (b) “Burton Act lands” means those tidelands granted to the city
- 5 by the Burton Act.
- 6 (c) “Burton Act Map” means that certain map entitled “MAP
- 7 OF LANDS TRANSFERRED IN TRUST TO THE CITY AND
- 8 COUNTY OF SAN FRANCISCO,” recorded in Book W of Maps,
- 9 Page 66, of the City and County of San Francisco Recorder’s
- 10 Office.
- 11 (d) “Burton Act transfer agreement” means that certain
- 12 agreement dated January 24, 1969, between the state and the city,
- 13 relating to the transfer of the Port of San Francisco from the state
- 14 to the city, and any amendments to that agreement in accordance
- 15 with its terms.
- 16 (e) “City” means the City and County of San Francisco, a charter
- 17 city and county.
- 18 (f) “Commission” means the State Lands Commission.
- 19 (g) “Paper street” or “paper streets” means any or all of those
- 20 areas of real property, located in the City and County of San
- 21 Francisco, consisting of certain portions of lands designated as

1 streets on the Burton Act Map, and more particularly described as
2 follows:

3 (1) That portion of Daggett Street lying between the easterly
4 prolongation of the northerly line of Sixteenth Street and the
5 southwesterly line of Seventh Street.

6 (2) That portion of Texas Street lying between the easterly
7 prolongation of the southerly line of Sixteenth Street and the Pueblo
8 Line of 1883, as shown on Sheet 4 of the Burton Act Map.

9 (3) That portion of Custer Avenue lying southerly of a line
10 parallel with, and distant 100 feet landward, from the mean High
11 Water Line of San Francisco Bay.

12 (4) That portion of Evans Avenue lying easterly and northerly
13 of the Line of Ordinary High Tide of 1868-1869 as shown on Sheet
14 6 of the Burton Act Map, and westerly of a line parallel with, and
15 distant 100 feet landward, from the mean High Water Line of San
16 Francisco Bay.

17 (5) That portion of Davidson Avenue lying easterly of the Line
18 of Ordinary High Tide of 1868-1869 as shown on Sheet 6 of the
19 Burton Act Map, and westerly of a line parallel with, and distant
20 100 feet landward, from the mean High Water Line of San
21 Francisco Bay.

22 (6) That portion of Ingalls Street lying southerly of the westerly
23 prolongation of the southerly line of Custer Avenue, northeasterly
24 of the Ordinary High Tide Line of 1869, and southeasterly of a
25 line parallel with, and distant 100 feet landward, from the mean
26 High Water Line of San Francisco Bay.

27 (7) Subject to approval by the commission, any portion of former
28 Arthur Avenue lying southwesterly of the southwesterly line of
29 Cargo Way, as dedicated on November 10, 1978, by Resolution
30 Number 834-78 of the Board of Supervisors of the city, and as
31 shown on Map T-27-85 on file in the office of the County Surveyor
32 of the city, lying easterly of the easterly line of Third Street,
33 abutting Assessor Parcel Numbers 5203-023, 5203-025, 5203-038,
34 5203-046, 5203-047, 5203-048, 5203-049, 5203-050, 5203-051,
35 5203-052, 5203-053, 5203-054, 5203-055, 5203-056, and
36 5203-057, inclusive, and Assessor Parcel Number 4570-019,
37 excepting therefrom that portion thereof lying between the
38 northeasterly prolongations of the northwesterly and southeasterly
39 lines of Mendell Avenue; the foregoing shall include, without
40 limitation, any portion of Arthur Avenue shown as lying outside

1 of Parcel “A” as depicted on the Burton Act Map, provided that
2 the commission finds and declares that there is uncertainty as to
3 the nature or extent of the state’s sovereign interest in these lands
4 and that the public interest would be served by the resolution of
5 that uncertainty by a settlement.

6 (h) “Port of San Francisco” or “port” means the city acting by
7 and through the San Francisco Port Commission.

8 (i) “Public trust” or “trust” means the public trust for commerce,
9 navigation, and fisheries, and, as applicable, includes any statutory
10 trust created by the Burton Act.

11 (j) “State” means the State of California.

12 (k) “Tidelands” means the area lying below the elevation of
13 ordinary high water, whether filled or unfilled, and includes
14 submerged lands.

15 SEC. 2. The Legislature finds and declares all of the following:

16 (a) Upon its admission to the United States of America on
17 September 9, 1850, the state, by virtue of its sovereignty, received
18 in trust for the purposes of commerce, navigation, and fisheries,
19 all right, title, and interest in ungranted tidelands and beds of
20 navigable waterways within its borders. The landward boundary
21 of such waterways is the ordinary high water mark.

22 (b) Under Section 3 of Article X of the California Constitution,
23 the state may sell tidelands within two miles of any incorporated
24 city, city and county, or town in the state, and fronting on the water
25 of any harbor, estuary, bay, or inlet that were reserved to the state
26 solely for street purposes, to any town, city, county, city and
27 county, municipal corporations, private persons, partnerships, or
28 corporations, subject to such conditions as the Legislature
29 determines are necessary to be imposed in connection with the
30 sales in order to protect the public interest, if the Legislature finds
31 and declares that the tidelands are not used for navigation purposes
32 and are not necessary for those purposes.

33 (c) Pursuant to several statutes, including, but not limited to,
34 Chapter 41 of the Statutes of 1851, as amended, and Chapter 543
35 of the Statutes of 1867–68, as amended by Chapter 388 of the
36 Statutes of 1869–70, the state sold certain tidelands in the city into
37 private ownership. However, some of the tidelands in the city,
38 including all of the paper streets, were withheld from sale and
39 reserved to the state solely for street purposes.

1 (d) In 1969, pursuant to the Burton Act, the state conveyed its
2 sovereign right, title, and interest in the Burton Act lands, including
3 the paper streets, to the city in trust for purposes of commerce,
4 navigation, and fisheries. The Burton Act lands are subject to the
5 public trust and are held by the Port of San Francisco as trustee.
6 The Burton Act requires that the moneys derived from the use of
7 the Burton Act lands be used solely for the furtherance of the
8 purposes set forth in the Burton Act.

9 (e) Presently, none of the paper streets are used, suitable, or
10 necessary for navigation or any other public trust purpose, other
11 than revenue generation. The paper streets are fragments that have
12 been cut off from direct access to the waters of San Francisco Bay
13 by past filling of intervening property and do not provide and are
14 not needed for public access to the waterfront. The lands adjoining
15 the paper streets have been freed of the trust and have been or are
16 proposed to be developed for nontrust uses. Certain of the paper
17 streets, including those comprising portions of Texas, Custer,
18 Ingalls, and Davidson Streets, as shown on the Burton Act Map,
19 were either never constructed as streets or have ceased to be used
20 for street purposes and are presently developed with structures,
21 including warehouse facilities and the recently closed Hunters
22 Point powerplant.

23 (f) Pursuant to the San Francisco Administrative Code, the port
24 has developed a capital plan identifying projects necessary and
25 convenient to the improvement, operation, and conduct of the
26 city's waterfront. Implementation of the port's capital plan is a
27 matter of statewide importance and is essential to furthering the
28 purposes of the public trust. Projects in the capital plan include,
29 but are not limited to, all of the following:

30 (1) Seismic and life-safety improvements to existing buildings
31 and other structures.

32 (2) Rehabilitation, restoration, and preservation of certain
33 structures.

34 (3) Structural repairs and improvements to piers, seawalls, and
35 wharves.

36 (4) Remediation of hazardous materials.

37 (5) Stormwater management facilities.

38 (6) Other utility infrastructures.

39 (7) Public access improvements.

1 (g) The estimated cost to implement the port's capital plan is
2 approximately 1.1 billion dollars (\$1,100,000,00). This amount
3 substantially exceeds the projected revenues that can be generated
4 from the use, lease, or operation of the city's waterfront under
5 present circumstances, in part due to the port's inability to make
6 optimal use of the paper streets.

7 (h) It is therefore the intent of the Legislature, subject to the
8 terms and conditions set forth in this act, to terminate the public
9 trust over the paper streets, to authorize the city to sell or otherwise
10 dispose of those lands free from the trust, and to require that the
11 revenues derived from the use, administration, or transfer of those
12 lands be used in furtherance of trust purposes. The Legislature
13 recognizes and acknowledges that the port's revenue needs, as
14 reflected in part in its capital plan, will remain considerable even
15 after obtaining additional revenues from the sale of the paper
16 streets.

17 SEC. 3. (a) The Legislature hereby finds in accordance with
18 Section 3 of Article X of the California Constitution that the
19 interest of the state in the paper streets was reserved to the state
20 solely for street purposes, and that the paper streets are no longer
21 used or necessary for navigation purposes.

22 (b) The city may, pursuant to Section 3 of Article X of the
23 California Constitution, lease, sell, or otherwise transfer all or any
24 portion of the paper streets, or any interest therein, to any private
25 person, partnership, or corporation, or to any governmental entity,
26 free of the public trust and of any additional restrictions on use or
27 alienability created by the Burton Act or Burton Act transfer
28 agreement. A lease, sale, or other transfer made pursuant to this
29 section shall not be effective unless and until the commission, at
30 a regular open meeting with the proposed transaction as a properly
31 scheduled agenda item, does or has done both of the following:

32 (1) Finds, or has found, that the consideration for lease, sale, or
33 other transfer of the paper streets or interest therein shall be the
34 fair market value of the land or interest sold.

35 (2) Adopts, or has adopted, a resolution approving the lease,
36 sale, or other transfer that finds and declares that the paper street
37 or streets to be transferred have been filled and reclaimed, are cut
38 off from access to the waters of San Francisco Bay, and are no
39 longer needed or required for the promotion of the public trust,
40 and that no substantial interference with the public trust uses and

1 purposes will ensue by virtue of the transfer. The resolution shall
2 also declare that the transfer is consistent with the findings and
3 declarations in Section 2 of this act and is in the best interests of
4 the state. Upon adoption of the resolution, or at a time that is
5 specified in the resolution, and the recordation of lease, transfer,
6 or sale documents, the street shall thereupon be free from the public
7 trust and any additional restrictions on use or alienability created
8 by the Burton Act or Burton Act transfer agreement.

9 (c) All revenues derived from the lease, sale, or other transfer
10 of the paper streets pursuant to this section shall be deposited in a
11 separate account *in the harbor trust fund established by the City*
12 *and County of San Francisco pursuant to Section 4 of the Burton*
13 *Act*, and shall be expended solely for purposes of implementing
14 the port's capital plan, consistent with the Burton Act and the
15 public trust.

16 (d) To effectuate the lease, sale, or other transfer of the paper
17 streets authorized by this section, the commission may convey to
18 the city by patent all of the right, title, and interest in the paper
19 streets held by the state by virtue of its sovereignty, including any
20 public trust interest or Burton Act reservation not previously
21 conveyed, free of the public trust and subject to any reservations
22 the commission determines appropriate.

23 (e) The Legislature finds and declares that the conditions set
24 forth in this section will protect the public interest in accordance
25 with Section 3 of Article X of the California Constitution.

26 SEC. 4. In the case where the state conveys tidelands or any
27 interest therein pursuant to this act, the state shall reserve all
28 minerals and all mineral rights in the lands of every kind and
29 character now known to exist or hereafter discovered, including,
30 but not limited to, oil and gas and rights thereto, together with the
31 sole, exclusive, and perpetual right to explore for, remove, and
32 dispose of those minerals by any means or methods suitable to the
33 state or to its successors and assignees, except that, notwithstanding
34 the grant or Section 6401 of the Public Resources Code, any
35 reservation shall not include the right of the state or its successors
36 or assignees in connection with any mineral exploration, removal,
37 or disposal activity, to do either of the following:

38 (a) Enter upon, use, or damage the surface of the lands or
39 interfere with the use of the surface by the city or by the city's
40 successors or assignees.

1 (b) Conduct mining activities of any nature whatsoever above
2 a plane located 500 feet below the surface of the lands without the
3 prior written permission of the city or the city's successors or
4 assignees.

5 SEC. 5. Any agreement or any deed, patent, or other instrument
6 executed or entered into pursuant to this act, shall be conclusively
7 presumed to be valid unless held to be invalid in an appropriate
8 proceeding to determine its validity in a court of competent
9 jurisdiction commenced within 60 days after the recording of the
10 agreement or instrument.

11 SEC. 6. (a) An action may be brought under Chapter 4
12 (commencing with Section 760.010) of Title 10 of Part 2 of the
13 Code of Civil Procedure to establish title to any lands conveyed
14 pursuant to this act, or by the parties to an agreement entered into
15 pursuant to this act to confirm the validity of the agreement.
16 Notwithstanding Section 764.080 of the Code of Civil Procedure,
17 the statement of decision in the action shall include a recitation of
18 the underlying facts and a determination as to whether the
19 conveyance or agreement meets the requirements of this act,
20 Sections 3 and 4 of Article X of the California Constitution, and
21 any other law applicable to the validity of the agreement.

22 (b) For purposes of Section 764.080 of the Code of Civil
23 Procedure and unless otherwise agreed in writing, an agreement
24 entered into pursuant to this act shall be deemed to be entered into
25 on the date it is executed by the executive officer of the
26 commission, who shall be the last of the parties to sign prior to the
27 signature of the Governor. The effective date of the agreement
28 shall be deemed to be the date on which it is executed by the
29 Governor pursuant to Section 6107 of the Public Resources Code.

30 SEC. 7. The city may modify any description and plat prepared
31 and recorded under Section 2 of the Burton Act and Section 11 of
32 the Burton Act transfer agreement to reflect the disposition of any
33 property pursuant to this act, and may record the modified
34 description and plat in the Official Records of the City and County
35 of San Francisco.

36 SEC. 8. The Legislature finds and declares that any conveyance,
37 sale, exchange, boundary settlement, confirmation of title, or agreed
38 ordinary high water mark made, established, or accomplished
39 pursuant to this act is of statewide significance, and, therefore, an

1 ordinance, charter provision, or other provision of local law
2 inconsistent with this act shall not be applicable thereto.

3 SEC. 9. Section 3 of Chapter 543 of the Statutes of 2004 is
4 amended to read:

5 Sec. 3. The Legislature finds and declares all of the following:

6 (a) The purpose of this act is to facilitate the productive reuse
7 of the TIDA property in a manner that will further the purposes
8 of the public trust and the statutory trust. To effectuate this purpose,
9 this act approves and authorizes the commission to carry out an
10 exchange of lands under which certain nontrust lands on Yerba
11 Buena Island with substantial value for the public trust would
12 become subject to the public trust and statutory trust, and certain
13 trust lands on Treasure Island that are no longer useful for trust
14 purposes would be freed from public trust and statutory trust
15 restrictions.

16 (b) Treasure Island includes lands that were historically tidelands
17 subject to the public trust. In 1933, the Legislature granted the
18 tidelands that would become Treasure Island to the city for
19 construction of an airport (Chapter 912 of the Statutes of 1933),
20 and amended the grant in 1935 to authorize use of the lands for
21 the Golden Gate International Exposition (Chapter 162 of the
22 Statutes of 1935). The city built Treasure Island between 1936 and
23 1939 by depositing sand and gravel on shoals north of Yerba Buena
24 Island and surrounding that fill with a rock retaining wall.

25 (c) Yerba Buena Island was acquired by the United States Navy
26 in 1898. In 1941, the city leased Treasure Island to the United
27 States, and Treasure Island and Yerba Buena Island became a
28 military base known as Naval Station Treasure Island. In 1942,
29 the Navy initiated federal court proceedings to condemn Treasure
30 Island and portions of the surrounding tidelands. In 1944, the Navy
31 took title to Treasure Island and certain adjacent tidelands pursuant
32 to a consent judgment in the condemnation action.

33 (d) Pursuant to a decision of the federal Base Realignment and
34 Closure Commission in 1993, Naval Station Treasure Island was
35 officially closed on September 30, 1997. That same year, the
36 Legislature enacted the conversion act, empowering the authority
37 to serve as redevelopment authority for the TIDA property upon
38 its conveyance to the city from the Navy. Under the conversion
39 act, the authority is the only entity that may lawfully accept from
40 the federal government title to trust lands on the TIDA property.

1 The Navy is presently in negotiations with the city and the authority
2 for the transfer of the TIDA property, or portions thereof, to the
3 authority.

4 (e) Redevelopment will require substantial investment in seismic
5 improvements on Treasure Island, including seismic reinforcement
6 of the perimeter of the island, to reduce the risk that buildings and
7 other facilities on the island will experience structural failure
8 caused by liquefaction and lateral spreading during a severe
9 earthquake. Redevelopment will also require replacement or
10 upgrading of all of the infrastructure and utility systems on the
11 islands, and completion of hazardous materials remediation. In
12 addition, several historic buildings, including those commonly
13 known as Buildings 1, 2, and 3, the Nimitz Mansion (Quarters 1),
14 and Quarters 2 to 7, inclusive, and 10, will require substantial
15 renovation to preserve their integrity and historic character.
16 Redevelopment must generate sufficient revenue to render the
17 needed seismic and infrastructure improvements and historic
18 renovations financially feasible.

19 (f) The conversion act grants in trust to the authority the state's
20 sovereign interest in former and existing tidelands within the TIDA
21 property and establishes the authority as the trust administrator for
22 those lands. These lands are subject to the public trust upon their
23 transfer from federal ownership.

24 (g) The federal government has asserted that the fact and manner
25 of its acquisition and ownership of the TIDA property have created
26 uncertainty as to the nature and extent of the state's sovereign
27 interest in the TIDA property. It is in the best interests of the people
28 of this state to resolve this alleged uncertainty in a manner that
29 furthers trust purposes.

30 (h) The existing configuration of trust and nontrust lands within
31 the TIDA property is such that the purposes of the public trust
32 cannot be fully realized. Certain uplands on Yerba Buena Island
33 of high value to the public trust due to their existing or potential
34 recreational, scenic, and habitat uses are currently not subject to
35 the public trust. Specifically, upper portions of the island afford
36 dramatic views of the bay and its environs, including Mount
37 Tamalpais and the Marin Headlands, Alcatraz, Angel, and Treasure
38 Islands, downtown San Francisco, the cities of the south bay and
39 east bay, and all five of the bay's bridges. The island provides
40 habitat for a variety of special status bird species, such as the

1 American peregrine falcon, black-crowned night heron, black
2 oystercatcher, Brandt's cormorant, and California brown pelican,
3 and parts of the lower reaches of the island provide haulout sites
4 for the harbor seal. In addition, there are lower areas of Yerba
5 Buena Island developed with structures, including the Nimitz
6 Mansion, that are useful for service to visitors.

7 (i) A substantial portion of the trust lands on Treasure Island
8 are lands that have been cut off from access to navigable waters
9 and are not useful for public trust purposes. Other lands, due to
10 their location and attributes, remain useful to the trust for future
11 open space and other trust uses, including the following: a wetland
12 restoration site; a pedestrian corridor around the entire shoreline
13 of the island linked with a major open space and recreational park
14 in the northern and eastern portions of the island; a proposed ferry
15 terminal and plaza, a marina, and other public waterfront amenities;
16 and other public ways that will provide waterfront access and
17 enhance water views across the island. The remaining lands that
18 are cut off from water access do not have these capabilities and
19 are no longer needed or useful for trust purposes. Development of
20 those lands for nontrust uses that are consistent with the
21 redevelopment goals of the conversion act and state redevelopment
22 law will not interfere with trust purposes and will provide revenues
23 needed to improve the trust lands in a manner that will maximize
24 their value to the trust.

25 (j) Absent a trust exchange, the uncertainties alleged by the
26 federal government regarding the sovereign trust title of lands
27 within Treasure Island would remain, and most of the lands on
28 Yerba Buena Island that are of high value to the public trust would
29 remain free of the public trust, and could thereby be cut off from
30 public access and developed for nontrust uses. In addition, the
31 interior lands on Treasure Island not useful for trust purposes could
32 not be used for residential or other nontrust uses essential for the
33 economic redevelopment of the island and for the financial
34 feasibility of needed seismic upgrades, historic preservation, and
35 the development of the Treasure Island waterfront and adjacent
36 open space for public purposes in furtherance of the trust. An
37 exchange will render redevelopment of Treasure Island
38 economically feasible and will allow the trust lands within the
39 TIDA property to be successfully transferred out of federal

1 ownership and to be used to the greatest benefit of the people of
2 the state.

3 (k) A trust exchange resulting in the configuration of trust lands
4 substantially similar to that depicted on the diagram in Section 12
5 of this act maximizes the overall benefits to the trust, and does not
6 interfere with trust uses or purposes. Following the exchange, all
7 lands within the TIDA property adjacent to the waterfront, as well
8 as certain lands on Yerba Buena Island that have high trust values,
9 will be subject to the public trust and the statutory trust. The lands
10 that will be removed from the trust and the statutory trust pursuant
11 to the exchange have been filled and cut off from navigable waters
12 and are no longer needed or required for the promotion of the
13 public trust. These lands constitute a relatively small portion of
14 the granted tidelands within the city. This act requires that the
15 commission ensure that the lands added to the trust pursuant to
16 the exchange have a value equal to or greater than the value of the
17 lands taken out of the trust.

18 (l) This act advances the purposes of the Community
19 Redevelopment Law (Part 1 (commencing with Section 33000)
20 of Division 24 of the Health and Safety Code) and the public trust,
21 and is in the best interests of the people of this state.

22 SEC. 10. Section 4 of Chapter 543 of the Statutes of 2004 is
23 amended to read:

24 Sec. 4. The Legislature hereby approves an exchange of trust
25 lands, as approved by the commission under Section 7 of this act,
26 between Treasure Island and Yerba Buena Island, whereby certain
27 Treasure Island trust lands that meet the criteria set forth in this
28 act and therefore are not now useful for public trust purposes will
29 be freed from the public trust and the statutory trust and may be
30 conveyed into private ownership, and certain other lands on Yerba
31 Buena Island that are not now subject to the public trust and that
32 are useful for public trust purposes will be made subject to the
33 public trust and the statutory trust, provided all of the following
34 conditions are met:

35 (a) The exchange results in a configuration of trust lands
36 substantially similar to that shown on the diagram in Section 12
37 of this act.

38 (b) The lands to be subject to the public trust are configured so
39 as to be accessible from the streets as finally configured within
40 the TIDA property.

1 (c) The exchange otherwise complies with the requirements of
2 this act.

3 (d) The exchange is consistent with and furthers the purposes
4 of the public trust.

5 SEC. 11. Section 7 of Chapter 543 of the Statutes of 2004 is
6 amended to read:

7 Sec. 7. (a) The commission is authorized to approve an
8 exchange of trust lands between Treasure Island and Yerba Buena
9 Island that meets the requirements of this act. Pursuant to this
10 authority, the commission shall establish appropriate procedures
11 for effectuating the exchange. The procedures shall include
12 provisions for ensuring that lands are not exchanged into the trust
13 until either of the following have occurred:

14 (1) All remedial action necessary to protect human health and
15 the environment with respect to hazardous substances on the land
16 has been completed as determined by the United States
17 Environmental Protection Agency, the California Department of
18 Toxics Substances Control, and the Regional Water Quality Control
19 Board, pursuant to the Federal Facilities Agreement for the Naval
20 Station Treasure Island dated September 29, 1992, as amended,
21 and the United States has provided a warranty in accordance with
22 Section 9620(h)(3)(A) of Title 42 of the United States Code.

23 (2) The United States has obtained a warranty deferral, approved
24 by the Governor in accordance with Section 9620(h)(3)(C) of Title
25 42 of the United States Code, involving land for which the
26 commission has determined to execute a certificate of acceptance
27 of title. Prior to approving a warranty deferral, the Governor, the
28 California Department of Toxics Substances Control, and the
29 Regional Water Quality Control Board shall confer and consult
30 with the commission to reasonably ensure that the terms of the
31 warranty deferral and underlying documents and agreements
32 provide sufficient standards and financial assurances to ensure that
33 the remediation of any affected trust lands will be completed in a
34 manner consistent with the intended public trust use of these lands
35 and in a reasonable period of time.

36 (b) The commission shall not approve an exchange of trust lands
37 pursuant to this act unless it finds all of the following:

38 (1) The configuration of trust lands upon completion of the
39 exchange will do all of the following:

1 (A) Not differ significantly from the configuration shown on
2 the diagram in Section 12 of this act.

3 (B) Include all lands within the TIDA property that are presently
4 below the line of mean high tide and subject to tidal action.

5 (C) Consist of lands suitable to be impressed with the public
6 trust.

7 (2) The final layout of streets within the TIDA property will
8 provide access to the public trust lands and be consistent with the
9 beneficial use of the public trust lands, including, but not limited
10 to, roadway access to serve the public along the western shoreline
11 of Treasure Island.

12 (3) The value of the lands to be exchanged into the trust is equal
13 to or greater than the value of the lands to be exchanged out of the
14 trust, as the exchange is finally configured and phased. The
15 commission may take into consideration any uncertainties
16 concerning whether the lands to be exchanged are currently subject
17 to the public trust.

18 (4) The lands to be taken out of the trust have been filled and
19 reclaimed, are cut off from access to navigable waters, are no
20 longer needed or required for the promotion of the public trust,
21 and constitute a relatively small portion of the tidelands granted
22 by the state within the city, and the exchange will not result in
23 substantial interference with trust uses and purposes.

24 (5) Sufficient building height limitations are in place to ensure
25 that views from public areas at Yerba Buena Island are not
26 obstructed.

27 (6) The trustee has approved the exchange.

28 (c) The commission shall impose additional conditions on its
29 approval of the exchange if the commission determines that these
30 conditions are necessary for the protection of the public trust. These
31 conditions may include a contribution to the Land Bank Fund,
32 established pursuant to Division 7 (commencing with Section
33 8600) of the ~~Public Resource~~ *Resources* Code, if the value of the
34 land brought into the public trust does not equal or exceed the
35 value of the land removed from the public trust.

36 (d) For purposes of effectuating the exchange authorized by this
37 act, the commission is authorized to do all of the following:

38 (1) Receive and accept on behalf of the state any lands or interest
39 in lands conveyed to the state by the trustee, including lands that

1 are now and that will remain subject to the public trust and the
2 statutory trust.

3 (2) Convey to the trustee by patent all of the right, title, and
4 interest of the state in lands that are to be free of the public trust
5 and the statutory trust upon completion of the exchange.

6 (3) Convey to the trustee by patent all of the right, title, and
7 interest of the state in lands that are to be subject to the public trust
8 and the statutory trust and the terms of this act upon completion
9 of the trust exchange, subject to the terms, conditions, and
10 reservations as the commission may determine are necessary to
11 meet the requirements of this act.

12 (e) The configuration of trust lands within the TIDA property
13 after completion of the trust exchange shall constitute the “trust
14 property” for purposes of the conversion act, notwithstanding
15 subdivision (b) of Section 4 of that act.

16 SEC. 12. The Legislature finds and declares that, because of
17 the unique circumstances applicable only to the lands within the
18 ~~central~~ *central* waterfront of the City and County of San Francisco
19 described in this act, a statute of general applicability cannot be
20 enacted within the meaning of subdivision (b) of Section 16 of
21 Article IV of the California Constitution. Therefore, this special
22 statute is necessary.

23 SEC. 13. If any provision of this act, or its application to any
24 person, property, or circumstance, is held invalid by any court, the
25 invalidity or inapplicability of such provision shall not affect any
26 other provision of this act or the application of that provision to
27 any other person, property, or circumstance, and the remaining
28 portions of this act shall continue in full force and effect, unless
29 enforcement of this act as so modified by and in response to that
30 invalidation would be grossly inequitable under all of the
31 circumstances, or would frustrate the fundamental purposes of this
32 act.